

PROBATION SYSTEM IN UNITED STATES COURTS

FEBRUARY 4, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. GRAHAM, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1042]

The Committee on the Judiciary, to whom was referred S. 1042, after hearing and consideration, report favorably thereon and recommend that the bill do pass. The bill is practically indetical with the bill H. R. 5195, reported favorably by the committee on April 1, 1924.

The purpose of this bill is to provide for the establishment of a probation system in the Federal courts. Prior to the so-called Kil-lutts case, rendered in December, 1916, the district courts exercised a form of probation either by suspending sentence or by placing the defendants under State probation officers or volunteers. In this case, however (Ex parte U. S., petitioner, No. 11, original), the Supreme Court denied the right of the district courts to suspend sentence. In the same opinion the court pointed out the necessity for action by Congress if the courts were to exercise probation powers in the future. The language of the court is as follows:

So far as the future is concerned * * * recourse must be had to Congress, whose legislative power on the subject is, in the very nature of things, adequately complete. (242 U. S. 52.)

Since this decision was rendered, two attempts have been made to enact probation legislation. In 1917 a bill was favorably reported by the Judiciary Committee and passed the House. In 1920 the Judiciary Committee again favorably reported a probation bill to the House, but it was never reached for definite action.

If this bill is enacted into law, it will bring the policy of the Federal Government with reference to its treatment of those convicted of violations of its criminal laws in harmony with that of the States of the Union. At the present time every State has a probation law, and in all but 12 States the law applies both to adult and juvenile offenders. (Hearings, p. 12.)

In the District of Columbia the probation system is authorized in all the courts.

This bill is intended to remedy the lack of this benevolent and helpful power in all other United States courts. The appeal for this bill to become a law is based in a sound humanitarianism. This bill will meet a great need in the administration of the criminal law, and ought to be promptly passed.

The following paper is so full and complete a statement in favor of the bill, showing also the many important and respectable indorsements which it has received, that it is hereto attached as a part of the committee report.

MEMORANDUM IN SUPPORT OF A BILL FOR THE ESTABLISHMENT OF A PROBATION SYSTEM IN THE UNITED STATES DISTRICT COURTS

[S. 1042, by Senator Copeland; H. R. 5195, by Mr. Graham.]

PURPOSE OF THE BILL

The purpose of this bill is to provide a system for the use of probation in the United States district courts in line with statutes now in effect in a large majority of the States. The power to suspend sentence and place suitable cases on probation at the court's discretion is very generally recognized to-day as necessary in all criminal courts, especially those that deal with children and young offenders, in order to bring about not only a humane but an efficient administration of justice. Every State in the Union now has a probation law, the law applying both to adult and to juvenile offenders in all but 12 of the States. Practically every civilized country has probation laws or their equivalent. The United States courts, except in the District of Columbia, where the probation system is authorized in all courts, have lagged far behind in this matter which it is the purpose of this bill to remedy.

THE AIMS AND METHODS OF PROBATION

Probation is the method by which the court disciplines and gives an opportunity to reform to certain offenders without the hardship, the expense, and the risk of subjecting them to imprisonment. It is used especially for young or first offenders and those not hardened in crime. The defendants after an investigation (usually by a probation officer) are released on suspension of sentence and placed under the authoritative and helpful oversight of a man or woman appointed by the court as probation officer. Those on probation must obey certain conditions; as, for instance, to report regularly to the probation officer, to abstain from evil associates and habits, to work regularly, to pay certain amounts regularly to the probation officer for family support, fines, or restitution, and other conditions. In case of failure to observe these conditions, those on probation may be returned to the court for sentence. The probation officer becomes acquainted with his charges, keeps informed regarding their conduct, secures employment for them, and aids and encourages them in every way possible. He reports frequently to the court concerning their progress and condition. The probation officer acts also as a social investigator of the court in all cases in which the home environment and circumstances need investigation before sentence or release on probation.

Probation as provided for in this bill is an effective disciplinary system. The probationer is encouraged in industrious, law-abiding habits; the probation officer by his watchful care prevents any recurrence of crime and protects the community from the same.

Through the social investigation of the probation officer and the power to place suitable cases on probation, the court is enabled to discriminate and adapt its treatment to fit the character and circumstances of the individual offender. It frequently happens that the same or a similar offense is committed by a hardened repeater who is deserving of no mercy at the hands of the court, and by a young boy, a first offender who has been led into crime by evil associates or bad environment, who after his detention and trial is thoroughly repentant and capable of becoming an upright citizen if extended a helping hand upon his release. In many such cases probation is not only

the humane but the practical and effective treatment, avoiding the disgrace and stigma of a prison sentence.

Probation in proper cases is highly economical. It enables the probationer to support himself and all those dependent upon him instead of making them, as frequently happens, a charge upon society when the breadwinner is committed. The expense of probation supervision under adequately salaried officers has been shown in the States of New York and Massachusetts to be less than one-fifteenth of the actual maintenance cost of a defendant in prison.

THE SUCCESS OF PROBATION IN THE STATES

The use of probation in State courts throughout the country has been growing constantly and has been showing remarkably good results when competent probation officers are employed.

While probation is used more or less in every State, two States, New York and Massachusetts, may be cited as having the most complete systems and as having available full information through the work of independent State probation commissions. In New York State, during 1922, 21,719 persons were placed on probation. In Massachusetts, during 1922, 28,177 were so placed. This was a total of 26.9 per cent of all convictions in that State. New York has 252 salaried probation officers at work in the courts; Massachusetts has 154. It is estimated that upward of 200,000 delinquents were dealt with through probation throughout the country during the past year.

The results of the system are shown to be increasingly effective. In New York State for the past 14 years an average of 77 per cent of all persons placed on probation completed their terms successfully. In Massachusetts about 80 per cent of probationers made good.

The rise of probation has decreased prison population in New York, Massachusetts, and many other States. The population of all State correctional institutions in New York State is to-day 4,000 less than it was in 1915. The greatest decrease is in the reformatories for adults and children. In Massachusetts probation, along with other factors, has decreased prison population from 6,877 in 1914 to 3,690 to-day. The aggregate of crime has also decreased. There were 10,000 fewer persons arrested in 1922 than in 1914 or in the years just previous.

Greatly increased sums are collected for fines, restitution, and especially family support, under the probation system. In New York State last year over \$2,000,000 was collected from probationers and paid over for the support of wives and children.

THE NEED FOR PROBATION IN THE FEDERAL COURTS

Before the decision of the United States Supreme Court in the so-called Killitts case, rendered in December, 1916 (Ex Parte U. S. Petitioner, No. 11, original), the United States district courts suspended sentence in many instances, and certain courts used a form of probation, though without legislative authority, placing defendants under the supervision of State probation officers or volunteers.

The opinion, in the case above referred to, by Chief Justice White, denied the inherent power of the United States district courts to suspend sentence but said: "So far as the future is concerned—that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise, to such judicial discretion as may be adequate to enable the courts to meet by the exercise of an enlarged but wise discretion in the infinite variations which may be presented to them for judgment—recourse must be had to Congress, whose legislative power on the subject is in the very nature of things adequately complete."

As a result of the decision of the Supreme Court bills for this purpose have been introduced in Congress at each session since. In 1917 such a bill passed both Houses of Congress, but was vetoed by President Wilson upon the advice of Attorney General Gregory, who criticized some features of the bill. In 1920 such a bill was reported favorably by the House Judiciary Committee, but failed to get further than the calendar.

The United States district courts, unlike nearly all State courts, have to-day absolutely no legal power to suspend sentence or use probation. Many of the judges to-day are forced to what almost amounts to an evasion of the law requiring the imposition of sentence. In extreme cases of children and young

first offenders, where removing them from a good home and sending them to a penal institution seems unnecessarily drastic, and where a fine can not be paid, certain judges now adjourn these cases for an indefinite period, requiring them to report at stated times to an officer of the court. At the conclusion of the adjournment, they must be brought back in each case and given a minimum sentence, sometimes one day in jail. The evil of this system, which seems to be on the increase, is apparent. It implies almost an evasion of the law; it does not furnish adequate supervision; and it makes it necessary to brand every person so dealt with as a convicted and sentenced offender. It goes without saying that the Federal judges are as competent to exercise discretion as are the judges of the State courts; and whereas there may not be as large a proportion of cases coming before the Federal courts where the use of probation would be desirable as among many State courts, there is, however, a large field for the use of probation in these courts.

The report of the Attorney General for the year ending June 30, 1923, shows that there were in the United States district courts a total of 68,152 criminal cases disposed of, 48,676 by conviction. Among these were cases of young and first offenders, convicted of violating the post office laws, such as stealing from the post offices and the mails, violation of interstate commerce laws, such as stealing from freight cars, violations of the food and drugs act, white slave act, etc. The national prohibition act has of course greatly increased the business of the Federal courts. Of the 48,676 convictions in these courts last year, 34,067, were under this act. While, judging from the experience of the many States that have State prohibition acts and had liquor regulation acts before prohibition, the field for the use of probation in these liquor cases is not as important or extensive as in the other classes of cases above mentioned, a probation system would nevertheless be an aid to the enforcement of these laws. In the State courts persons have not been placed on probation to any extent in prohibition cases, except to supplement a fine. The use of probation instead of a jail sentence, where the court felt that the latter was deserved, is almost unknown.

The discretion of the Federal courts in prohibition as in all other cases today, as to the extent of the penalty, is absolute. In other words, there is no minimum sentence. The courts in any prohibition case may impose a \$1 fine or less. In other words, they practically have the power to discharge. Granting the power to suspend sentence does not in effect increase the powers of the court at all in the matter of leniency, but, on the other hand, gives an added method of punishment. Probation, properly enforced, is a real discipline, placing the defendant under supervision and requiring him to refrain from all evil practices, at least for the period of probation. Many Federal judges with whom we have talked, who are strong advocates of the strictest enforcement of the national probation act, have stated that the probation system would aid them greatly in enforcing this act. There can be no honest objection to it on the ground that it would give any greater leeway than is now held by the judges in imposing minimum penalties.

Of the 7,808 Federal prisoners committed during the year ending June 30, 1923, 63 per cent are reported by the Attorney General as having been imprisoned for the first time. Almost half of these prisoners were under 30 years of age, and of these 673 were boys under 20 years of age, 43 per cent were married, and 75 per cent were natives of the United States.

The parole laws and pardoning power of the President are not adequate to meet the need for a probation system. Under the parole law the defendant must be committed and serve at least one-third of the sentence in full. This usually means six months' sentence, and always means the branding of the delinquent as a convict and taking him away from his environment and associates in disgrace. The result of long experience with the probation system shows that it is far easier to reclaim an unhardened early offender without commitment to a prison than after it. The presidential power of pardon is subject to the same criticism and can naturally only be exercised in special cases.

The handling of child delinquents in the Federal courts will be greatly aided by this bill. The United States Children's Bureau has estimated that at least 1,000 children under 18 are arrested for Federal offenses yearly. The Children's Bureau has indorsed this measure.

This bill is modeled on the best provisions for adult probation in force in the States of New York, Massachusetts, and other States having successful probation work. Its principal provisions are as follows:

SECTION 1. *Suspension of sentence and placing on probation.*—The United States courts of original jurisdiction are authorized to suspend sentence and place offenders on probation in all cases except those punishable by death or life imprisonment. This provision is the same as that of the New York State law. In Massachusetts and several other States there is no restriction whatever on the powers of the court to suspend sentence and use probation. The period and conditions of probation are determined by the court and may be changed at any time, except that the period may not be continued for more than five years. Among other conditions the probationer may be required to make payments for fines, restitution, or family support.

SEC. 2. *Providing for terminating and revoking probation.*—It is important that probation be enforced, in order that it may be a real system of discipline and in order that society may be well protected. Hence it is provided that the probation officer may arrest without a warrant and that the court may impose the penalty at any time during the probation period.

SEC. 3. *Appointment of probation officers.*—The judge of any United States district court may appoint probation officers to carry out the provisions of the act and may remove them at pleasure. Such officers shall be unpaid except that each court may appoint one salaried officer. There is nothing which prevents the appointment or use of probation officers of other courts or attachés of the United States courts for this work. If a judge decides that on account of the extent of this work a paid probation officer is required, he is authorized to appoint one and to fix his salary, subject to the approval of the Attorney General in each case. Salaried probation officers are placed under the civil service of the United States. Judges may also allow probation officers their actual expenses.

SEC. 4. *Duties of probation officers.*—Probation officers are required to make investigations, to instruct probationers, to keep informed as to their conduct and condition and to report to the court thereon, and to carry out the usual duties of probation officers, including the making of reports to the Attorney General as required.

INDORSEMENTS

This bill was drafted by the undersigned committee appointed by the National Probation Association, with the cooperation and assistance of many district court judges, State judges, attorneys, and social workers. It has the indorsement of many organizations and individuals interested in the work of the courts.

The bill in its present form was sent to each of the district judges and United States attorneys, with a request for an opinion thereon. Letters were received from a majority of these, and of these a large majority were favorable to the bill. We submit extracts from these letters as an appendix herewith.

Respectfully submitted.

Committee on Federal Probation of the National Probation Association, by Edwin L. Garvin, United States district judge, Brooklyn, chairman; George Gordon Battle, attorney, 37 Wall Street, New York City; C. R. Bradford, judge juvenile court, Salt Lake City; Augustus N. Hand, United States district judge, New York City; Francis Fisher Kane, former assistant United States attorney, Philadelphia; George W. Kirchwey, former dean Columbia Law School, New York City; Adolph Lewisohn, 61 Broadway, New York City; Adelbert Moot, attorney, Erie County Savings Bank Building, Buffalo; James M. Morton, jr., United States district judge, Boston; William H. Nicholl, chief adult probation department, San Francisco; Herbert C. Parsons, commissioner of probation, courthouse, Boston; Joseph W. Sanford, chief probation officer juvenile court, District of Columbia; Amos A. Steele, chief probation officer, supreme court, District of Columbia; Frank E. Wade, attorney, Morgan Building, Buffalo; George W. Wickersham, former Attorney General, New York City; Maude E. Miner, secretary Girls' Service League of America, New York City; Kathryn Sellers, judge juvenile court, Washington; James Hoge Ricks, judge juvenile and domestic relations court, Richmond, president National Probation Association; Charles L. Chute, general secretary National Probation Association.

OPINIONS OF UNITED STATES DISTRICT JUDGES ON THE PENDING BILL TO ESTABLISH
A PROBATION SYSTEM IN THE FEDERAL COURTS

Hon. J. M. Morton, jr., Boston, Mass.: "My views about the necessity of a probation system in the Federal courts, especially now when the increase of police court cases brings in many young and first offenders, have been so often and fully expressed to your association and to Congress that it would be useless labor for me to restate them. The great multiplication of misdemeanor cases brought about by the Volstead Act makes such legislation absolutely and immediately essential, in my judgment, for the proper administration of justice. I have looked through the draft act and see nothing to criticize or to suggest about it."

Hon. John C. Knox, New York City: "The establishment of a probation system in the Federal courts is, in my judgment, a crying need. In many instances the existence of such a system would have saved me much worry and concern in that there would have been a better method than now exists for dealing with persons who were not at heart criminals but who had none the less succeeded in violating Federal statutes."

Hon. Henry W. Goddard, New York City: "I beg to acknowledge receipt of your letter of December 10 in relation to a proposed bill to permit the United States courts of original jurisdiction to suspend sentence and place offenders on probation in suitable cases. I can see no reason why the United States district courts should not have this power. Such a disposition of offenders has been found desirable in other courts, and I think in some cases it is a good one, so that I favor a law permitting it to be done."

Hon. John Rellstab, Trenton, N. J.: "I have your letter dated December 10 inclosing copy of a bill to be introduced for the establishment of a probation system in the United States courts. I am heartily in favor of the proposed law."

"Before I was appointed to the Federal bench I had nine years' experience as a county judge administering the criminal laws of this State. It was my good fortune to inaugurate a probation service, and without the powers to suspend sentence and to put offenders on probation I would have been very seriously handicapped in meting out proper punishment or exercising clemency with any reasonable certainty that it would not be detrimental, both to the offender and the community at large. The lack of such power by the Federal judges, in my opinion, prevents the proper administration of the United States criminal laws, and I covet for them the power exercised by the State judges."

"Since Congress has made stealing, etc., of goods in interstate commerce a crime under the Federal law, a great many young offenders, ranging from 13 years up, have been brought before the judges of this district, and the lack of power to suspend sentence put the offenders under surveillance, subject them to probation conditions for a definite time, and enforce these conditions if violated by appropriate punishment seriously interferes with the proper administration of such laws. To some degree the same may be said as to offenses committed against other Federal laws."

"I understand that there is no serious objection to the passage of some kind of probation law, but that objections are made to having a paid probation officer. I can appreciate certain of the reasons that underly such objections, but candor compels the suggestion that a really efficient probation system requires the constant employment of a probation officer, and that it is too much to expect anyone to give without compensation the time and attention necessary to make the probation service effective."

"I sincerely hope that the salary provisions of the pending bill will not be eliminated, and that Congress may pass it, or one substantially like it."

Hon. Charles T. Lynch, Newark, N. J.: "I am in favor of any act of Congress which will institute a probation system in the United States courts. The bill which you propose introducing, I think, is very good."

Hon. John A. Peters, Portland, Me.: "I have your letter with copy of proposed bill to provide for the establishment of a probation system in the United States courts. I approve of the idea, and a casual reading of the bill leads me to think that it is adequate."

Hon. Frank Cooper, Albany, N. Y.: "I may say that the absence of power in the Federal court to suspend sentence and place the offenders on probation is a distinct handicap and limits the service which the Federal courts are able to render in criminal cases. I am distinctly in favor of granting such power

to the Federal courts, and it seems to me that the bill which you have introduced covers the subject very well, and I am willing to be reported as being in favor of the passage of the bill in the form in which you have it. I trust that the bill may become a law."

Hon. F. P. Schoonmaker, Pittsburgh, Pa.: "I am in favor of the probation system. In the State of Pennsylvania the probation system has shown some disadvantages, in that the offenders on probation have not been followed up and looked after by the probation officers. I presume that possibly the same situation will prevail in the United States courts. Nevertheless, I feel as though the probation system is one that should be put into force, and I am in favor of the bill. I do not believe that without regularly paid probation officers the court can follow up the cases of offenders who have been placed on probation to ascertain whether or not the parole is being complied with."

Hon. Walter C. Lindley, Danville, Ill.: "I have read the proposed bill to provide for establishing a probation system in United States courts carefully and thoroughly approve it. I have found myself handicapped at times in not being able to extend probation to persons convicted in my court. The proposed bill seems to me to cover the situation admirably, and I hope Congress shall see fit to enact it."

Hon. W. E. Baker, Elkins, W. Va.: "I have with great care and interest read the proposed bill and am in most hearty accord with the suggestions therein contained. On numerous occasions past I have longed for authority to do just what this bill contemplates. To give you a concrete example: A young girl 19 years of age, brought up on a farm by parents in very meager circumstances, went to a city for the purpose of taking training as a nurse in one of the hospitals. Seeing other girls well dressed, the desire for fine clothes led her to order by mail through a fictitious name from mail-order houses articles of clothing. She was caught and indicted. Investigation proved her to be of good family, not of vicious habits, and to be succeeding exceptionally well in her training. To have imposed a fine upon her would have been utterly useless, as neither she nor her parents and relatives had anything with which to pay. To have sent her to prison would have blighted her life. I thereupon sentenced her to three years' training in the hospital, requiring that she report to me personally four times a year; that the head nurse and the chief surgeon also report to me as to her progress twice a year. Very much to my delight this girl has more than made good. She has the reputation of being the most careful, painstaking nurse in the institution. Her efforts have brought to her the promotion to head night nurse. Every patient coming away from the hospital speaks of her in the highest terms, and although two years have passed she has never made a misstep.

"I believe my action in this case—which was probably without authority—has been the means of making a most estimable and desirable citizen and woman of this girl. On the other hand I believe that sentencing her to prison would have wrecked what is proving to be a most useful career.

"To my mind the work of your association is one of the most important before the American people to-day, and the bill suggested should have preferred attention by our National Congress."

Hon. Smith Hickenlooper, Cincinnati, Ohio: "Replying to your letter of December 10 in reference to the proposed bill to permit United States courts of original jurisdiction to suspend sentence and place offenders on probation in suitable cases, will say that I am of the opinion that in many cases such power would be extremely valuable to the courts, especially in the cases of first offenders and minors. Although the desired results can sometimes be secured by imposing a fine without order of commitment until the fine and costs are paid, or by postponing sentence upon receipt of a plea of guilty and the release of the prisoner upon his own recognizance in a fixed amount, the court, of necessity, lacks both the time and opportunity of carefully following up a case in the manner in which a probation officer could do so, and the methods suggested are but evasions of the legal prohibition against suspended sentences.

"I believe that the passage of the law would be decidedly to the advantage of the public interest, as well as to the proper administration of the criminal laws, if it were hereafter carefully administered and not abused for personal or political purposes.

"Upon the whole, I may say that I favor it as now drafted."

Hon. John E. Sater, Columbus, Ohio: "The power to suspend sentences or to place the accused on probation may be subject to abuse by imprudent

judges, but a means of accomplishing much good by discreet judges. Notwithstanding the liability to abuse, which I do not think would be extensive, I have thought for many years some appropriate power ought to be vested in the courts to enable them to test out and save the accused to good citizenship when it is reasonably clear there is a fair chance of such an effort proving successful. The bill sent seems quite well adapted to meet the situation."

Hon. Charles C. Simons, Detroit, Mich.: "I have been impressed almost from the first day of the great need of a probation system and the great desirability there is for this court to have the right to suspend sentence. This is particularly true in the case of juvenile and female offenders, but I would not limit it to them. I have already had a great many cases where the proper solution seemed to be not in imposing a light sentence and then entirely losing control of the case, but rather in keeping the convicted person under the proper surveillance and control for a substantial period. In cases where the youth of the offender and his previous good record seems to indicate a moderate sentence. I feel that it is a very unfortunate thing after the sentence is imposed and has been served that we no longer have any record of the case or control over the person.

"It occasionally happens also that the circumstances of the case are such that the minimum sentence provided by law seems unnecessarily harsh, and our only recourse in such cases after imposing sentence is to make such recommendation to the parole board as will secure some relief. Again it also happens that the data at hand at the time of imposing sentence may be so meager that a mistake is apt to be made and the sentence imposed may be either too severe or it may be too lenient."

Hon. C. B. Luse, Superior, Wis.: "I heartily approve the purposes of the bill and think the power of placing on probation should be extended to the United States courts. I have read the bill over and while I have made no close study of same, I think it covers the situation and the need."

Hon. Rufus E. Foster, New Orleans, La.: "I am heartily in favor of a national probation law authorizing the Federal courts to suspend sentences in worthy cases.

"Many cases come under my observation where it would be for the best interests of the offender and also of society that the sentence be suspended and the offender placed on probation. Only last week I had a case of that kind. A veteran of the World War came before me charged with making a false affidavit in regard to compensation claimed. He had been badly wounded and was receiving compensation and vocational training, part of his compensation going to his mother. His mother married and for one or two months he continued to file his application. The money was in fact paid over to his mother when he received it and on demand by the Government, after discovering the irregularity, the total amount was repaid to the United States. A suspended sentence would have been proper in that case, in my opinion. I was without authority to impose it, so on his plea of guilty I postponed the imposition of sentence until he had the opportunity to raise the amount of a fine. I have had occasion to take similar action in a number of cases, but that, of course, if unsatisfactory, and a judge would not feel at liberty to postpone sentences for more than two or three terms, if that long.

"The result is that purely on the grounds of mercy, sentences inadequate to the crime considered technically only are imposed and unfortunate precedents are thus created which if they do nothing else arise to plague the judge when similar cases are presented.

"So far as I can see from a hasty reading of the proposed bill it ought to meet the requirements of the situation. I will be glad to do anything in my power to further the enactment of the law."

Hon. Rhydon M. Call, Jacksonville, Fla.: "I am heartily in favor of Congress passing such legislation as will permit the suspension of sentences in criminal cases during good behavior of the defendant. In my experience on the bench, extending over a period of 30 years in the State and United States courts, I have found the suspension of a sentence does much more to rehabilitate the defendant than any course the court can pursue; especially would this be true in the multitude of prosecutions under the Volstead Act. Defendants having paid the fine or served the sentence imposed, appear to feel that they have paid in full for the violation and are privileged to do the same thing again and risk being caught, while in the case of a suspended sentence they feel that they are released on honor and with the knowledge that if

they are again guilty of violating the law the sentence will be then imposed I sincerely hope Congress will pass the bill."

Hon. William B. Sheppard, Pensacola, Fla.: "I beg to acknowledge receipt of yours of December 10 inclosing draft of bill to establish a probation system in the United States courts. I heartily approve of some such legislation.

"I have had some humiliating experiences in the disposition of cases where the good of the unfortunate and the interests of society did not require imprisonment of the offender. One recently, that I recall, was that of a woman in the advanced stages of tuberculosis who pleaded guilty to the embezzlement of a small sum while in charge of a fourth-class post office. Having no discretion or latitude except to sentence the defendant, the department in Washington was requested to designate or arrange a suitable place for confinement. That being effected, the invalid woman was imprisoned in a common jail in Kentucky. When her condition and disease were discovered, the authorities earnestly recommended that she be paroled or in some way released, which was urged earnestly by myself, but the last I heard of her she was still in jail after eight or nine months' confinement.

"Justice and humanity demand some modification of the law as it now exists, and I sincerely hope Congress may be induced to see the necessity of allowing some discretion in the courts as to female and juvenile defendants."

Hon. Edwin R. Holmes, Yazoo City, Miss.: "I have read your letter very carefully, and also the inclosed bill. I am heartily in favor of its passage. I think it will be productive of much good, especially in the enforcement of the national prohibition act. I have often felt the need of the authority granted under this bill, especially in sentencing youthful offenders. As the law now stands there is nothing for the court to do with youthful offenders except to imprison them in the county jails, or the federal penitentiary, or the national training school, or to let them off with a small fine. This bill seems to have been well thought out and very carefully drawn. I can not suggest any amendments to improve it. I hope it will pass."

Hon. Robert T. Ervin, Mobile, Ala.: "I have read with much interest the copy of the bill to provide for the establishment of a probation system in the United States courts and I heartily approve its provisions. There are many cases coming before the courts where justice can be done with a great deal more accuracy under the probation system than without it and these cases can only be determined by the judge before whom the case comes. It is a great misfortune in a civilized community where no provision is made for such cases and we are left to enforce the law rigidly as written."

Hon. Colin Neblett, Santa Fe, N. Mex.: "I am heartily in favor of such a bill and think that Federal judges should be given power to suspend sentence."

Hon. William H. Barrett, Augusta, Ga.: "I am profoundly convinced of the wisdom of the adoption of the bill that you suggest, or one of like tenor. For some years past our local court, which has charge of misdemeanors, has utilized this method of punishment most effectively, and many times have I desired to give a like sentence, but was not authorized so to do."

OPINIONS OF UNITED STATES ATTORNEYS ON THE PENDING BILL TO ESTABLISH A PROBATION SYSTEM IN THE FEDERAL COURTS

Charles M. Morris, Salt Lake City, Utah: "I have read the draft of the proposed bill with great interest and it gives me great pleasure to indorse the bill and all the provisions thereof unqualifiedly. In my opinion, the proposed bill will remedy a most vital defect in the administration of the Federal criminal laws.

"For the past two year United States Judge Tillman D. Johnson, of this district, and I have frequently discussed ways and means to handle cases involving young men and women when in our judgment penal servitude would wreck their lives. In such cases Judge Johnson has frequently continued the time for passing sentence from month to month and has required such defendants to report to this office at stated intervals in order to determine whether the good in those young people will assert itself to the end that they will become honorable citizens and worthy members of society. In practically all of these cases these young people have made good and the Attorney General of the United States, upon being advised of these situations, has concurred in my recommendation and has permitted, after a long period of such probation, the final dismissal of these cases. So far as I know, not one of these cases, which have numbered quite a few in the last two years, has failed in the ex-

pectation of the court and this office, but, on the contrary, all of these young people have made of themselves, at least up to the present time, good, honest, honorable citizens, and are either busily engaged in school work or in gainful and useful occupations.

"I have frequently expressed a sincere hope that some national legislation will be enacted which will evolve a system of probation and which will authorize Federal judges to pass probation sentences. The draft of your proposed bill seems to meet this emergency and I heartily indorse the same and assure you that if I can be of any assistance in presenting to any Member of Congress any facts within my knowledge which will impress upon them the urgent necessity of such legislation, you will please command me."

E. E. Hindman, Jackson, Miss.: "I have carefully read this bill and it has my hearty approval, and I trust that you will be successful in having it passed at this session of Congress."

Ira K. Wells, San Juan, P. R.: "I am very much in sympathy with this movement. I know something of the workings of the Kansas law in the matter of probation and know that it has done a great deal of good, and that many persons are saved by it and made useful, respected citizens, whereas otherwise they would probably have continued to go down. I hope that you will be able to scure the passage of this bill and I will assist in every way possible."

L. E. Oldham, Oxford, Miss.: "For the last 21 years I have been an attaché of this court in almost every capacity save that of judge, and I believe my long experience entitles me to a first-hand knowledge of the criminal practice and procedure."

"At the present time, a Federal judge is powerless in the exercise of discretion in matters of this kind which is absolutely essential. In this connection, Mississippi had a Federal judge in the person of Hon. Henry C. Niles, who died in 1918, who possibly exceeded his powers, but nevertheless did, for 15 years, assume the rights of probation and it is a matter of common knowledge throughout the entire State of Mississippi that great good came from it and was the means of the reformation of many criminals into useful, honorable citizens."

"I wish you every success in your efforts in this direction and assure you of my hearty sympathy and, if worth anything, my cooperation."

S. E. Murray, Memphis, Tenn.: "I approve of the bill which you propose to introduce in the present Congress authorizing district judges to release on probation persons convicted in their courts. I daily see the need of such a law, and I will be glad to assist you in any way in my power to effect its passage."

T. A. Brown, Parkersburg, W. Va.: "This proposed legislation has my most hearty approval and endorsement. In my judgment it is one of the most meritorious pieces of legislation that has been proposed in recent years. As United States attorney, I found many defendants that I felt should be placed on probation rather than sent to prison. This applies especially to young people."

Albert D. Walton, Cheyenne, Wyo.: "I appreciate the fact that there is a great need for a law conferring power upon Federal trial courts to suspend sentence and put the defendant upon probation, and from a hurried examination of the proposed bill inclosed it would seem to me that such a bill would be beneficial."

"I have known of several cases since I have been United States attorney for the district of Wyoming in which I felt that if it were within the power of the court to suspend sentence and require defendant to report to the court at stated intervals, it would work to the best interest of society and the defendant as well. I am in favor of a wide range of discretion in the trial courts, as practically no two people convicted of an offense justify the same punishment. In some cases I am in favor of most severe punishment and in others great leniency, depending upon the nature of the crime and of the person convicted."

Thomas P. Revelle, Seattle, Wash.: "Permit me to say that I am most heartily in favor of such a bill. My experience as United States attorney has convinced me that it is to-day one of our most needed bits of legislation."

S. W. Clark, Redfield, S. Dak.: "I am in favor of permitting United States judges to suspend sentences under certain conditions, and I do not find any objections to the bill as proposed."

E. G. Davis, Boise, Idaho: "I heartily approve of the proposed bill."

W. H. Dougherty, Madison, Wis.: "It is our sincere belief that a bill such as the National Probation Association seeks to have enacted is exceedingly necessary. It has been my experience that there are cases in the United States court which can not properly be disposed of in any other way. At the present time our office is acting as a quasi guardian for the defendants who look to us much in the same way that a defendant would under the provisions of the proposed act. The proposed bill in my estimation, is quite complete."

Robert O. Harris, Boston, Mass.: "Having had a long experience with the probation system in Massachusetts, I am heartily in favor of the extension of the system to the Federal courts. The copy of the bill which you inclosed meets with my general approval."

Elliott Northcott, Huntington, W. Va.: "I beg to state that from my observations as United States attorney in the prosecution of a large number of violations of the Federal statutes I heartily and without reservation indorse the proposal for the enactment of probation laws for Federal courts. I know of no one thing that would, in my opinion, accomplish more good than the putting into effect these laws."

"I have hurriedly examined the inclosed bill, and, as far as I can see, it meets my approval."

James H. Hughes, jr., Wilmington, Del.: "It has seemed to me for some time that the administration of justice demands that Federal judges have the power to place defendants upon probation. Such a power would relieve the present rigidity of the present Federal penal system. The proposed bill seems to me to cover the situation."

Allan K. Smith, Hartford, Conn.: "I can state that the purposes of the bill meet with my unqualified approval. In addition to the humanitarian considerations which have brought about the probation system in the State courts and the granting of power to the State courts to impose suspended sentences, I believe that the practical administration of the United States courts would be assisted and the ends of justice advanced if the power to place upon parole and to release upon suspended sentences was granted."

○

